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Re: Dockets WC 17-192, and CC 95-155

Re: In the Matter of Toll Free Assignment Modernization Toll Free Service Access Codes

COMMENTS

This is a comment responding to the Notice of Proposed Rulemaking (NPRM) In the Matter of Toll Free Assignment Modernization Toll Free Service Access Codes, released September 28, 2017, in the above referenced docket numbers. The statutory mandate to the FCC is to make “numbers available on an equitable basis.” Revising section 52.111 of the Commission’s rules, to allow the Commission to assign numbers through an auction process, does not result in an equitable distribution of Toll Free Numbers (TFN’s). Furthermore, only allowing Responsible Organizations (RespOrgs) to “bid for numbers valuable to them” is no more equitable than the current first-come, first-serve rule of assigning TFN’s. An allocation of numbers should not be considered equitable if only the wealthiest participants are able to participate in the auction, leaving most individuals and small companies in a position where they are financially unable to participate in the process. Furthermore, creating a property interest in TFN’s is against public policy and could lead to a plethora of further concerns for the Commission. Ultimately, the Commission is asking to place a value on TFN’s which opens the door for companies to acquire the most desirable vanity numbers just to turn around and sell them to companies for a profit.

CREATING A PROPERTY INTEREST

Even if the Commission decides that an auction process for the distribution of mutually exclusive TFN's meets the statutory mandate of "making numbers available on an equitable basis," such a process would inadvertently result in the creation of a property interest in the TFN's. An auction would place a value on the mutually exclusive numbers, allowing only those with ample resources to potentially "win" a vanity number. For example, the Commission initially stated that there are at least 65 RespOrgs that want the top ten mutually exclusive numbers. In an auction, these 65, or so, RespOrgs would place their bids in a "Single Round, Sealed-Bid Auction" as proposed by the Commission. As such, the winning bidder would have to pay value for the number, which would create a property interest in the number. This creation of a property interest generates additional complications that the Commission is not considering. Mainly, since the winning bidder now has a property interest in the number it can be sold and re-sold. This seems contrary to public policy. In fact, the Commission itself has found that selling TFN's is contrary to public policy.

MAKING NUMBERS AVAILABLE ON AN EQUITABLE BASIS

The Commission is proposing to set up an auction for the most desirable, or mutually exclusive numbers, yet plans on distributing the less desirable numbers on a first-come, first-serve basis. This process would not satisfy the statutory requirement of equitable distribution of TFN's. The Commission would just be speculating as to whether a TFN is desirable or not, thus placing a potentially high value on some numbers, while placing zero value on other numbers. The whole idea of an equitable distribution of numbers is equality, which is blatantly disregarded in the Commission's proposal of a Vickery auction. This type of auction may also place some

small businesses at a disadvantage compared to large companies, who understand how the complicated Vickery auction works. Large corporations have the resources to hire consultants and experts to give them an advantage in the auction process. Together, these concerns result in a violation of the statutory mandate.

BROKERING RULE

To proceed with the proposal of auctioning off mutually exclusive numbers to RespOrgs, the Commission must abandon the current brokering rule to allow for a secondary market of TFN's. Consistent with this comment, I believe that abandoning the brokering rule further violates the statutory mandate of equitable distribution of numbers. The Commission has long held that brokering is not allowed and it should not change its views just to create a secondary market. Such a move would be contrary to the statutory provisions and to public policy.

TOLL FREE NUMBERS BEING USED FOR PUBLIC PURPOSES

The Commission seeks comment on “whether certain desirable toll free numbers necessary to promote health, safety, education, and other public interest goals should be set aside for use, without cost, by government (federal, state, local, and tribunal) agencies as well as by non-profit health, safety, education or other non-profit public interest organization.” While providing these entities the most desirable TFN's may be beneficial to consumers, such a decision would contradict the statutory equitable standard. This would essentially create a monopoly on the top ten mutually exclusive numbers because the government or non-profit would have first pick leaving no chance for any other entity to ever obtain the desirable number.

Therefore, the Commission should not set aside for use these numbers for government entities or non-profits.

Respectively Submitted,

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